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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

A.B.,

Petitioner,

v.

THE SUPERIOR COURT OF
STANISLAUS COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Real Party in Interest.

F065883

(Super. Ct. No. 516353)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Ann Q.
Ameral, Judge.

Carin L. Johnson, for Petitioner.

No appearance for Respondent.

John P. Doering, County Counsel, and Maria Elena Ratliff, Deputy County
Counsel, for Real Party in Interest.

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* Before Gomes, Acting P.J., Kane, J., and Detjen, J.

Petitioner A.B. (petitioner) seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's order denying reunification services and setting a Welfare and Institutions Code section 366.26 hearing as to her infant daughter, Aaliyah B.¹ Petitioner challenges the juvenile court's detention of and exercise of dependency jurisdiction over Aaliyah, the department's decision not to place Aaliyah with her paternal grandmother, and the juvenile court's findings resulting in its order denying reunification services. On review, we conclude petitioner's arguments are meritless.

PROCEDURAL AND FACTUAL HISTORY

Petitioner is the mother of many children, who are not in her care due to her severe drug abuse and her erratic behaviors. Three of the children were adjudged juvenile dependents between 2003 and 2005 and removed from petitioner's custody due in part to her drug abuse and frequent incarcerated status. The superior court eventually terminated reunification services due to petitioner's lack of effort and progress. In late 2005, the superior court terminated parental rights to the three children.

Between 2006 and 2011, petitioner was arrested at least a dozen times on drug- and theft-related charges. In some instances, she was convicted. In others, she was returned to jail or state prison for probation or parole violation.

In September 2011, petitioner admittedly used methamphetamine while pregnant with Aaliyah. Petitioner thought the fetus ingested methamphetamine when she smoked it, but petitioner decided to smoke methamphetamine anyway. She was incarcerated as a result for felony probation violation.

Aaliyah was born in December 2011. Although she was not "substance exposed" at birth, she was diagnosed with Down Syndrome.

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

In March 2012, petitioner was arrested on drug- and theft-related charges. She received a felony conviction and was sentenced to a 56-month jail term. She served 45 days and then was released on “house arrest” with an ankle monitor.

Events Resulting in the Underlying Proceedings

On June 22, 2012, a woman was observed stumbling and wandering about an Office Depot store. She appeared to be under the influence. Witnesses were concerned because she had with her an infant, who was unrestrained in a shopping cart. According to one witness, the baby cried and the woman responded by telling the baby to be quiet. The woman was repeatedly heard to say “Mommy needs to get some money.” The cart containing the baby almost tipped over several times. The woman was “sling shooting” the cart around the aisle.

The woman eventually exited the store, leaving behind her identification. The identification bore petitioner’s name and address. As the woman left the store, the cart overturned with the baby inside. The woman righted the cart, went to her vehicle, “tossed” the baby in the car and erratically drove off.

An emergency response social worker repeatedly attempted to visit petitioner at the residence listed on her identification but to no avail. Neighbors confirmed a woman and infant resided at the address. A check with petitioner’s probation officer revealed the information about petitioner’s house detention and ankle monitor requirement. Probation lost the GPS signal to petitioner’s ankle monitor the same day as the incident in the store. Petitioner’s whereabouts were unknown to her probation officer. The probation officer also stated that petitioner admitted in mid-June to using cocaine and crack.

On June 25, 2012, adult probation and the social worker conducted a search of petitioner’s home. She was not present. Her ankle monitor was found in the home. The search also revealed a crack pipe in the bathroom, a digital scale commonly used for measuring drugs, cans of formula and a small baby swing.

On June 26, petitioner called real party Stanislaus County Community Services Agency (agency) asking to meet with the social worker who had been to petitioner's home. Petitioner was aware of a warrant for her arrest and was attempting to avoid detection. She claimed she had placed her child in the care of an "Aunt" named Cynthia.

Later on June 26, the social worker met with petitioner and Aaliyah at the home of Cynthia. Petitioner admitted that she relapsed on crack and cocaine five days earlier and deliberately removed her ankle monitor. She denied having been in an Office Depot store. Instead, she claimed she got into an argument with personnel at a Walmart store. She further denied being under the influence while at the store and behaving inappropriately or aggressively with Aaliyah.

Petitioner later admitted Cynthia was a friend whom petitioner met when they were both incarcerated. Cynthia was not an appropriate caregiver for the baby due to Cynthia's background and the agency's inability to clear her for placement. Petitioner also acknowledged later still that she had Aaliyah in her care since birth except when she (petitioner) was incarcerated earlier in the year.

Petitioner was arrested and incarcerated on June 26. Because Aaliyah's father was incarcerated in state prison at the time, there was no caregiver for the child. As a result, Aaliyah was placed in protective custody and the agency initiated the underlying dependency proceeding.

The agency's petition contained allegations, based on the evidence summarized above, that: Aaliyah was at substantial risk of suffering serious physical harm as a result of her parents' inability to adequately protect her and provide adequate care due in particular to mother's substance abuse (§ 300, subd. (b)); the parents were incarcerated and left Aaliyah without an appropriate caregiver (§ 300, subd. (g)); and Aaliyah's siblings had been neglected and there was a substantial risk that Aaliyah would likewise be neglected (§ 300, subd. (j)).

Less than a week after petitioner's arrest, another social worker interviewed her. Petitioner confirmed her substance abuse in the days prior to her arrest. She also acknowledged that when she used drugs, her behaviors were "way out there I get really off the hook, bizarre." Petitioner admitted she needed help. She wanted Aaliyah placed with paternal relatives and an opportunity to reunify with Aaliyah.

Detention and Relative Placement

The day after the agency placed Aaliyah in protective custody, the paternal grandmother (grandmother) expressed a desire to have the child placed with her. The grandmother allegedly cared for Aaliyah when petitioner was previously in jail.

The grandmother lived with three other adults and two grandchildren in a two-bedroom apartment. The grandmother was directed to complete an application and have everyone in her home "live scan."

At a June 29 detention hearing, a superior court judge made temporary detention orders and directed the agency to investigate the grandmother for possible relative placement. The judge also continued the matter for a further detention hearing in early July 2012.

A social worker tried to obtain from the grandmother the names and background information of the other adults in her home, in time for the early July hearing. However, when the social worker contacted the grandmother, she stated the other adults were asleep at the time and she was unwilling to disturb them. The social worker explained she could not run a criminal background check on the other adults without the information, which in turn would delay possible placement with the grandmother. The grandmother said she understood.

Another superior court judge, who was normally not assigned to juvenile court, conducted the further detention hearing in early July. During an off-the-record discussion, the judge learned the matter was continued as a contested hearing for the

social worker to “check out relative placement.” Counsel for petitioner requested an additional continuance while county counsel for the agency objected. The judge continued the detention hearing to July 11 to allow the Agency enough time to complete its assessment. The judge urged petitioner to communicate with relatives that they needed to be forthcoming with their information and cooperative with the agency.

Yet another superior court judge, whose regular assignment was in the juvenile court, conducted the July 11 hearing. She expressed concern that the posture of this case was strange in that Aaliyah was detained on June 26 and the matter was set and continued over for a contested detention hearing. In the judge’s view, the case should be set for a jurisdictional hearing. County counsel on behalf of the agency agreed and explained the agency continued to assess relatives.²

Counsel for petitioner requested that Aaliyah be placed with the grandmother. He claimed the three other adults in the grandmother’s home had been fingerprinted. There was no evidence before the court, however, that the grandmother’s home had been cleared for placement. Petitioner’s counsel did not ask to present evidence or cross-examine the agency’s social worker regarding detention or placement.

The court confirmed the detention orders previously made in June 2012 and set the matter for a jurisdictional/dispositional hearing in August 2012.

Although the relatives living with the grandmother were cleared in mid-July, the social worker discovered Aaliyah’s adult uncle lived next door to the grandmother and was in and out of her home. The living arrangements between the two apartments were described by the family as “fluid.” As a result, the uncle needed to be fingerprinted before the grandmother could be approved for placement. However, he refused.

² A paternal aunt also expressed an interest in placement. However, she apparently never completed an application that the agency forwarded to her.

Consequently, on August 1, 2012, the agency denied the grandmother's placement request. The grandmother administratively challenged the denial, which was upheld in late August.

As of early September, the uncle completed the fingerprinting process, the results of which raised concerns and a history "that may or may not be exemptable." In the meantime, the agency placed Aaliyah in a "concurrent placement" and was not willing to reconsider placing Aaliyah with the grandmother.

Jurisdictional/Dispositional Hearing

The agency recommended that the juvenile court sustain the petition, adjudge Aaliyah a dependent, remove her from parental custody, and deny the parents reunification services. In recommending no reunification services for petitioner, the agency relied on the evidence that reunification services for three of Aaliyah's siblings had been previously terminated because petitioner failed to reunify with them after they had been removed from her custody, as well as that petitioner's parental rights to those children had been severed and petitioner had not subsequently made a reasonable effort to treat the problems that led to the siblings' removal from petitioner's custody. (§ 361.5, subd. (b)(10) & (11).)

The problems that led to the siblings' removal from petitioner's custody included petitioner's substance abuse issues, law enforcement "entanglements" and unsafe behaviors with a child in her care. Much had "remained eerily similar" for petitioner since then. Petitioner was unable to maintain her sobriety, had relapsed and behaved erratically with another child. She did not seek out help on her own initiative between the loss of services and parental rights as to Aaliyah's siblings in 2005 and Aaliyah's detention and petitioner's incarceration in 2012. Her several substance abuse-related arrests and periods of incarceration in the interim also indicated petitioner had not made an effort to treat the problems that led to the removal of Aaliyah's siblings.

Once petitioner was re-incarcerated in the summer of 2012, she began attending weekly NA/AA meetings and twice-a-week parenting classes at the facility's honor farm where she was housed. However, as of early September, there had been five reported incidents in which mother did not follow the facility rules, including one incident in which petitioner possessed contraband. As a result of the contraband incident, she was not permitted to continue participating in the parenting program.

Petitioner made an offer of proof in September 2012 as to what her testimony would be. One, she was appealing the decision denying her additional classes in the parenting program. She had completed all but two of those classes. Two, prior to Aaliyah's birth, she participated in classes geared toward the parenting of children with Down Syndrome and was aware of the responsibility this entailed. Three, petitioner called someone at a clean and sober living program to discuss entry into that program once she relapsed and before Aaliyah was detained. Petitioner was informed that due to her ankle bracelet, she could not be admitted until it could be cleared with the sheriff's department. Four, her exit date from the jail would be October 8 and she was prepared to take whatever steps were necessary to enter a clean and sober living environment. She also made arrangements to enter a particular clean and sober program.³ The parties and the court accepted petitioner's offer of proof.

Following the parties' closing arguments, the court exercised its dependency jurisdiction over Aaliyah pursuant to section 300, subdivisions (b), (g) and (j). It also made the requisite findings to remove Aaliyah from parental custody, including that reasonable efforts had been made to prevent or eliminate the need for removal. The court also denied petitioner reunification services under section 361.5, subdivision (b)(10) and

³ The agency, however, did not contract with that program.

(11). The court subsequently set a section 366.26 hearing to select and implement a permanent plan for Aaliyah.

DISCUSSION

I. The Court Lawfully Detained Aaliyah.

Petitioner contends the juvenile court never lawfully detained Aaliyah at the outset of these proceedings and denied her (petitioner) due process. She further claims the agency did not make reasonable efforts to prevent Aaliyah's detention. We disagree with each of these contentions, as discussed below.

A detention hearing is the first hearing conducted once a child has been taken into temporary custody and a petition is filed with the juvenile court to exercise its dependency jurisdiction. (§§ 309 & 319.) At such a hearing, the social worker must report on: (1) the reasons for the children's removal, (2) the need, if any, for continued detention, (3) the available services that could facilitate the return of the child to the parent's custody, and (4) whether there are any relatives who are able and willing to take temporary physical custody of the child. (§ 319, subd. (b).) The social worker must make a prima facie showing that the child comes within section 300 (the grounds for jurisdiction) as well as that continuance in the parent's home is contrary to the child's welfare. (§ 319, subd. (b).)

At the original detention hearing on June 29, 2012, petitioner's counsel requested a "contested" hearing. However, once a social worker testified to a prima facie case to detain Aaliyah, petitioner's counsel declined the opportunity to cross-examine the witness and never sought to introduce any evidence. The court expressly found the detention was appropriate and proper. It also made temporary detention findings and orders, as reflected in its June 29, 2012, minute order and as required by section 319. The court further continued the "contested" detention hearing, first to early July and then again to mid-July.

The court made its detention orders temporary and twice continued the hearing so that the agency might be able to place Aaliyah with the grandmother and possibly avoid a foster placement, if not further proceedings on its dependency petition. The court is authorized to place a child whom it has released from custody in the assessed home of a relative. (§ 319, subd. (f)(1).) If a parent is willing to forego reunification efforts, the court may grant legal guardianship with the assessed relative and dismiss the dependency proceeding. (§ 360, subd. (a).)

An assessment of a relative's suitability includes an in-home inspection and consideration of the results of a criminal records check and a check of allegations of prior child abuse or neglect concerning the relative and other adults in the home. (§ 309, subd. (d)(1).) The standards used to determinate suitability are the same standards for licensing foster family homes. (*Ibid.*)

The agency's ability to assess Aaliyah's grandmother was repeatedly foiled by the lack of cooperation, first, on the part of the other adults who lived with the grandmother and, thereafter, by the refusal of Aaliyah's uncle to submit his fingerprints for a background check. On the record before us, the juvenile court could properly find that the agency made reasonable efforts to prevent Aaliyah's detention/removal.

To the extent petitioner claims the child need not have been detained because her home was with "Aunt" Cynthia, petitioner overlooks the record in this respect. Although petitioner initially claimed she had left Aaliyah in Cynthia's care, petitioner later admitted that Aaliyah always had been in her care except when petitioner was incarcerated earlier in 2012, during which Aaliyah was with the grandmother. Also, petitioner's argument assumes that Cynthia was a suitable caregiver for the child. However, that assumption finds no support in the record. Cynthia's background and the agency's inability to clear her for placement made her an unsuitable placement option. Further, petitioner never pursued placement of the child with Cynthia once the matter was

before the court. Thus, mother's argument that the agency should have done more to investigate Cynthia as a placement option is meritless.

At the last of the three detention hearings, the juvenile court confirmed the written detention findings and orders made at the June hearing. Although petitioner's counsel continued to press for Aaliyah's placement with the grandmother, he never claimed that the court denied petitioner a contested hearing or had not properly detained Aaliyah in the first place.

In dependency proceedings, parties have a due process right to cross-examine and confront witnesses. (*In re Malinda S.* (1990) 51 Cal.3d 368, 383.) Petitioner, through her counsel, ostensibly claimed that right on June 29 by requesting a contested detention hearing. However, in fact, counsel was merely trying to postpone detention in the hopes that the agency could successfully assess the grandmother and place Aaliyah with her. Petitioner was never denied the opportunity to have a contested hearing.

In addition, because petitioner never voiced in the juvenile court the complaints she now makes about the lack of a contested hearing and the court's temporary detention findings, she has waived the opportunity to so complain to this court. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) Further, despite her detention-related complaints, petitioner does not challenge the juvenile court's formal September 2012 removal order, which required a finding by a heightened clear and convincing standard of proof (§ 361, subd. (c)). Accordingly, we conclude her detention hearing arguments are also moot. (*Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541.)

II. The Court Properly Exercised its Dependency Jurisdiction over Aaliyah.

Petitioner next contends there was insufficient evidence to support the juvenile court's exercise of dependency jurisdiction over Aaliyah under section 300, subdivision (b) or (g). Petitioner bases her various arguments on a very selective reading of the record, which is an approach we cannot abide. (*In re A.A.* (2008) 167 Cal.App.4th 1292,

1313.) In addition, she omits any challenge to the court's jurisdictional finding under section 300, subdivision (j) based on the neglect that Aaliyah's siblings suffered years earlier.

Although the juvenile court exercised its dependency jurisdiction over Aaliyah on multiple grounds, we need only find support for one of them to uphold the court's exercise of jurisdiction. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 876.) Because petitioner does not challenge the jurisdictional finding under section 300, subdivision (j), we could conclude she has forfeited her other jurisdictional arguments. (*In re Jonathan B.*, *supra*, at p. 876.) Alternatively, we hold the court properly exercised its dependency jurisdiction under section 300, subdivision (b), based on petitioner's relapse and conduct on June 22, 2012.

Petitioner claims the evidence was insufficient to support a jurisdictional finding under section 300, subdivision (b) (failure to provide adequate care) for the following reasons. One, none of the witnesses from the Office Depot store ever identified petitioner as the woman they had seen behaving erratically in the store on June 22. Two, there was no evidence that the woman in the Office Depot store was actually under the influence. Three, witnesses described the baby as a month old or two to three months old, whereas Aaliyah was approximately six months old on June 22. Four, petitioner denied she had been at an Office Depot store. Four, Aaliyah appeared to be in good health and not at risk when the social worker saw her on June 26.

We find none of petitioner's claims to be persuasive. The standard of proof for the court's exercise of dependency jurisdiction is only a preponderance of the evidence. (§ 355, subd. (a).) The agency easily met that burden in this case.

One, the court could reasonably infer from the available evidence, most notably, petitioner's identification left in the store, that she was the woman witnesses saw behaving erratically with the baby. In addition, petitioner fails to cite and we know of no

authority requiring an eyewitness identification of her for the court to believe she was the woman at the store.

Two, the juvenile court had the benefit of petitioner's own admission to the social worker that she had relapsed and was under the influence of crack and cocaine as of June 22. Further, she also acknowledged that when she used drugs, her behaviors were bizarre and she behaved that way at the time of the June 22 incident.

Three, the fact that the witnesses estimated the baby's age was younger than that of Aaliyah did not preclude the court from determining that it was Aaliyah that the witnesses saw being mistreated by petitioner. There was other evidence in the record that Aaliyah was small for her age.

Four, it is true that Aaliyah appeared to be in good health on the date the agency detained her. However, petitioner ignores the evidence that she exposed Aaliyah to a risk of serious physical harm on June 22 when petitioner was "sling shooting" the cart with Aaliyah in it unrestrained, as petitioner later "tossed" Aaliyah into the car, and when petitioner erratically drove off. In other words, the juvenile court could properly find that petitioner's admittedly bizarre behavior when she relapsed placed Aaliyah at risk of serious physical harm. (§ 300, subd. (b).)

III. The Agency Made Reasonable Efforts to Return Aaliyah to a Safe Home.

One of the dispositional findings the juvenile court made was that the agency made reasonable efforts to return the child to a safe home, so as to prevent the need for removal (§ 361, subd. (d)). Petitioner appears to acknowledge that due to her incarceration the agency could not provide her with traditional reunification services. As the agency points out, the services a parent may engage in while incarcerated are limited to what is available within the facility. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 971.)

Nonetheless, petitioner argues the agency did not make reasonable efforts to facilitate the possibility of reunification because she never received any visits with Aaliyah between the June 2012 detention hearing and the September 2012 jurisdictional/dispositional hearing. It is true that no visits occurred during that timeframe. However, it was not for want of a reasonable effort on the agency's part.

Petitioner was incarcerated originally at the county's "Safety Center" facility but, was moved to its honor farm as of mid-July. At the honor farm, petitioner was participating in parenting classes. However, visitation at the honor farm was limited to the weekends. There was also a parenting lab that children could attend on Fridays. However, the lab was between 6:00 and 7:15 p.m. By contrast, at the Safety Center, a prisoner could have visits during regular working hours on weekdays. Those were non-contact visits "through the glass" compared to contact visits at the honor farm. Also, there were no parenting classes available at the Safety Center.

As of the July 11 hearing, no visitation had been ordered or had occurred. If Aaliyah could be placed with the grandmother, she would hopefully facilitate visits while petitioner was incarcerated. The juvenile court asked that the current foster parents assist with transportation for visits, but admitted they could not be forced to do more than they were able. In addition, social workers did not work on the weekends and could not be expected to work in the evening.

The juvenile court added that although engaging in a program was important, visits would be more important, given the age of the child. Normally, the standard visitation order would be a minimum of two hours a week. The court nonetheless realized there was difficulty when visits could only be on the weekend and social workers did not work on the weekends.

As of early August, petitioner's counsel reported she still had not had a visit with Aaliyah. He claimed that the agency had been unwilling to arrange a weekend visit.

However, the court corrected counsel reminding him that the agency's social workers did not work on the weekends and could not be expected to work in the evening. There were a few placement specialists who were willing to give up a weekend day to help facilitate transportation to the facility but it was a difficult problem. The issue was really with the sheriff's office. Petitioner's regular visit time was 8:00 a.m. on Sundays.

On August 10, 2012, a placement specialist asked the grandmother if she was able to transport Aaliyah for visits. The grandmother replied she would provide transportation only if she had Aaliyah in her care. The placement specialist was scheduled to transport Aaliyah for a visit on August 18, 2012, but due to illness the worker could not make it. The foster parents attempted to take the child for a visit but the facility would not allow the foster parents to enter. The following week petitioner was cited for possessing contraband in the facility. As a result, her visitation privileges were suspended for the following two weeks, leading up to the September jurisdictional/dispositional hearing.

On this record, we conclude the department made reasonable efforts to provide petitioner with visitation. The department cannot be faulted for the fact that visitation did not occur.

On a related note, mother challenges an additional dispositional finding, namely that she had made minimal progress in alleviating the circumstances that led to Aaliyah's detention. She claims she was denied the ability to show progress because she did "as advised by the court by protecting visitation and foregoing parenting class." The record does not support petitioner's claim in this respect.

As mentioned above, petitioner was housed at a facility that had a parenting class, which she attended but had not completed as of the September 2012 dispositional hearing. There was no evidence of any progress she made in that program. Also, she attended NA/AA meetings, but there was no evidence that she was making any progress.

Further, there was no evidence that she somehow sacrificed the opportunity to participate in the parenting class in order to secure visitation with Aaliyah.

IV. The Agency Gave Preferential Consideration to Relative Placement.

According to petitioner, the agency did not diligently pursue relative placement for Aaliyah and instead acted in bad faith. When a child subject to the juvenile court's jurisdiction must be removed from parental custody, the agency's obligation is to give preferential consideration to relatives interested in placement, such as the grandmother in this case. (§ 361.3.) Here, the agency clearly gave the grandmother the requisite preferential consideration. Nevertheless, petitioner argues otherwise.

She claims Aaliyah's uncle submitted to fingerprinting before the agency issued its letter to the grandmother denying her request for placement. Petitioner also argues that the agency did not disclose this information to the court. Once again, petitioner improperly picks and chooses evidence from the record to support her claim. (*In re A.A.*, *supra*, 167 Cal.App.4th at p. 1313.)

Aaliyah's uncle was asked to submit his fingerprints for background check purposes in July 2012, but he refused to cooperate. Consequently, on August 1, 2012, the agency denied, by way of letter, the grandmother's placement request. The grandmother administratively challenged the August 1 denial, which was upheld in late August, resulting in a second formal denial.

As of early September, the uncle completed the fingerprinting process, the results of which raised concerns and a history "that may or may not be exemptable."⁴ According to a case worker note, the uncle complained in early September that the agency should have placed the child with the grandmother because he submitted to fingerprinting before

⁴ Exemptable refers to the fact that some, but by no means all, criminal history of a prospective relative caregiver or other adult living in the prospective caregiver's home can be exempted or excused, clearing the way for a relative placement to occur.

the “denial” was issued. There was no indication to which denial, the agency’s or the administrative appeal, the uncle was referring. It is the uncle’s complaint petitioner relies upon in claiming the agency acted in bad faith.

There are several problems with petitioner’s claim. First, according to the agency’s evidence, the uncle refused to be fingerprinted before the agency issued its August 1 denial letter. At best, the uncle’s complaint amounts to conflicting evidence on this point. However, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether there is any substantial evidence, contradicted or not, to support the trier of fact’s conclusion. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the decision, if possible. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.)

Next, if the uncle was fingerprinted before the grandmother’s administrative appeal was complete and the ruling made upholding the agency’s denial was issued, this does not necessarily mean the agency acted in bad faith or the grandmother consequently was entitled to placement. Petitioner overlooks the evidence that the records-check following the uncle’s fingerprinting raised concerns on the agency’s part. Apparently, Aaliyah’s uncle had a criminal or child abuse/neglect history that could require an exemption before the agency might again consider the grandmother for placement.

In any event, all of this information was provided to the court in the form of an exhibit. The agency did not withhold information from the court.

Petitioner also points out that the agency placed Aaliyah in a “concurrent placement” in late August and was not willing to reconsider placing Aaliyah with the grandmother on a theory that it was “too late.” It is unclear from the record what the agency meant by “too late.” No one, including petitioner, pursued the issue at the dispositional hearing. It is conceivable that the agency meant it was “too late” in the

sense that the agency is statutorily required to complete its investigation into relative placement within 30 days of the initial removal. (§ 309, subd. (e)(1).)

To the extent petitioner claims the agency abused its discretion by not reconsidering the grandmother for placement, petitioner asserts her claim for the first time on review. The juvenile court made a point of stating it would not make “any orders for direct placement,” presumably with the grandmother, “unless one is able to show that the Agency has abused its discretion.” Strikingly, petitioner remained silent in response to the court’s statement. By her silence in the juvenile court, she has forfeited the right to make her claim now. (*In re S.B.*, *supra*, 32 Cal.4th at p. 1293.)

V. The Court Properly Denied Mother Reunification Services.

Last, petitioner claims the juvenile court abused its discretion by denying her reunification services. She acknowledges that the agency established alternative grounds under section 361.5, subdivision (b)(10) and (11) for denying her reunification services, based on her failure to reunify with and the loss of parental rights to three of her children in 2005 and her failure to make a subsequent reasonable effort to treat the problems that led to the removal of Aaliyah’s siblings. She further admits it was her burden to persuade the court that services nevertheless would be in Aaliyah’s best interests. (§ 361.5, subd. (c).) Nevertheless, she claims the juvenile court abused its discretion by denying her services because she carried her burden of proof. We disagree.

Petitioner contends that services would be in Aaliyah’s best interest because she (petitioner) took reasonable action by placing Aaliyah with an appropriate caregiver, Cynthia, a month before petitioner was arrested. Petitioner’s factual premise is flawed, as previously discussed in this opinion. Although she initially claimed she left Aaliyah in Cynthia’s care, petitioner later admitted that Aaliyah always had been in her care except when petitioner was incarcerated earlier in 2012. Also, petitioner’s argument assumes that Cynthia was a suitable caregiver for the child. However, that assumption finds no

support in the record. Cynthia's background and the agency's inability to clear her for placement made her an unsuitable placement option.

Petitioner also relies on the parenting class and NA/AA meetings in which she participated after her June 2012 arrest and incarceration. However, she fails to establish how such participation proved that services would be in Aaliyah's best interest and, therefore, that the court abused its discretion. Even so, her argument overlooks the many years of relapse and incarceration she experienced prior to her latest arrest in June 2012. That history belies any claim that her recent efforts established that reunification services would be in Aaliyah's best interest.

Petitioner finally contends the court did not have the benefit of any evaluation of the relationship between her and Aaliyah. Petitioner in turn places the blame for this lack of evidence on the agency or the court because neither did anything, in her opinion, to secure visitation. She takes the matter a step further and argues it was no fault of hers that she did not receive visitation and she should somehow be excused for not satisfying her burden of proof. We are not persuaded.

Petitioner could have presented evidence regarding the nature of her relationship with Aaliyah, *prior* to petitioner's June 2012 arrest, in an effort to persuade the court to exercise its discretion and grant her (petitioner) reunification services. However, for whatever reasons, petitioner did not do so.

Further, the lack of visits between the detention and dispositional hearings is regrettable but, as discussed above, it was the fault of neither the agency nor the court, so as to excuse petitioner from having to show reunification services would be in Aaliyah's best interest. Finally, petitioner's claim that the lack of visitation was not her fault is simply not credible. It was petitioner who relapsed, disconnected her ankle restraint, exposed Aaliyah to a risk of serious physical harm, and was eventually arrested and incarcerated.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is immediately final as to this court.